PETITION FOR SPECIAL HEARING 85-262-SPH TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the relocation of an existing nonconforming use(storage of home repair materials) which was established by circuit court case #88170 from Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition. Contract Purchaser: John C. Viegert, Jr. (Type or Print Name) City and State Attorney for Petitioner (Type or Print Name) tract purchaser or representative to be contacted (2007) Attorney's Telephone No.: _____ ORDERED By The Zoning Co.nmissioner of Baltimore County, this of ________, 19_85_, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout 3altimore County, that property be posted, and that the public hearing be had before the Zoning Compissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore Court on the _____25tb ____ day of ___March ____, 1985 , at 11:00 o'clock Zoning Commissioner of Baltimore County. 85-262-SPH BALTIMORE COUNTY OFFICE OF PLANNING & ZONING County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

85

3

John NW/S Ave.

Your petition has been received and accepted for filing this 19th day of February, 1985.

Zoring Commissioner John C. Diegert, Jr., et Received by Micholas B. Commodari Chairman, Zoning Plans Advisory Committee



PETITION AND SITE PLAN

EVALUATION COMMENTS

3/14/85

Property Owner: John C. Diegert, Jr., et uy

Chief. Current Planning and Development

Re: Zoning Advisory Meeting of 1/24/85

Location: Muis Simms Court

The Division of Current Planning and Development has reviewed the subject

)A County Review Group Meeting is required.
)A County Review Group meeting was held and the minutes will be forward by the Bureau of Public Services.

)This site is part of a larger tract; therfore it is defined as a

)This property contains soils which are defined as wetlands, and

under the provisions of Section 22-98 of the Development
Regulations.
Development of this site may constitute a potential conflict with

)The amended Development Plan was approved by the Planning Board

)Landscaping: Must comply with Baltimore County Landscape Manual.)The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve

Capacity Use Certificate has been issued. The deficient service

)The property is located in a traffic area controlled by a "D" level

intersection as defined by Bill 178-79, and as conditions change

traffic capacity may become more limited. The Basic Services Areas

development on these soils is prohibited.

() Construction in or alteration of the floodplain is prohibited

petition and offers the following comments. The items checked below are

to issuance of a building permit.)The access is not satisfactory.

the Baltimore County Master Plan.

)Additional comments:

 $(\not\propto$)There are no site planning factors requiring comment.

subdivision. The plan must show the entire tract.

The circulation on this site is not satisfactory.

)The parking arrangement is not satisfactory.

)Parking calculations must be shown on the plan.

are re-evaluated annually by the County Council.

)A record plat will be required and must be recorded prior

Ny Simms Ave.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204

NORMAN E. GERBER DIRECTOR

Mr. Arnold Jabion Zoning Commissioner

Dear Mr. Jablon:

County Office Building Towson, Maryland 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Date March 20, 1985 Zoning Commissioner Norman E. Gerber, Director

SUBJECT Zoning Petition No. 85-262-SpH

FROM Office of Planning and Zoning

Arnold Jablon

In view of the subject of this position, this office offers

Office Of Planning and Zoning

making benderation of the property of the prop

NEG:JGH:sm

no comment.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 14, 1985

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Mr. & Mrs. John C. Diegert, Jr. 9034 Simms Court Towson, Maryland 2120 Baltimore, Maryland 21234

Nicholas B. Commodari Chairman

MEMBERS

Bureau of

Engineering

Department of Traffic Engineering State Roads Commissio Eureau of Fire Prevention Health Department Project Planning Building Department

Board of Education

Industrial

Zoning Administration

Dear Mr. & Mrs. Diegert:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning. as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you.
Otherwise, any comment that is not informative will be
placed in the hearing file. This petition was accepted for
filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Thechaire & Commadain NICHOLAS B. COMMODARI Chairman Zoning Plans Advisory Committee

RE: Item No. 205 - Case No. 85-262-SPH

Special Hoaring Petition

Petitioner - John C. Diegert, Jr., et ux

NBC:bsc

Enclosures

BALTIMORE COUNTY FIRE DEPARTMENT TOWSON, MARYLAND 21204-2586 494-4500

> PAUL H. REINCKE February 8, 1985

Mr. Arnold Jablon Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204

Attention: Nick Commodari, Chairman Zoning Plans Advisory Committee

RE: Property Owner: John C. Diegert, Jr., et ux

Location: NW/S Simms Ct. 450' N. from c/l Simms Avenue Item No.: 205

Gentlemen:

Zoning Agenda: Meeting of 1/29/85

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at ___ EXCEEDS the maximum allowed by the Fire Department.

!) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 *Life Safety Code*, 1976 Edition prior

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments, at this time.

Special Inspection Division

to occupancy.

REVIEWER: Out Joseph Approved:

Planning Group

Special Incomment

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES TOWSON MARYLAND 21204 494-3610

February 19, 1985

The second secon

TED ZALESKI, JR. Mr. Arnold Jablon, Zoning Commissioner

Office of Planning and Zoning County Office Building Towson, Maryland 21204

Dear Mr. Jablon: Comments on Item # 205 Zoning Advisory Committee Meeting are as follows:

Property Owner: John C. Diegert, Jr., et ux
Location: NW/S Simms Court 450 N. from c/l Simms Avenue
Existing Zoning: D.R. 5.5 Proposed Zoning: Special hearing to approve the relocation of an existing non-conforming use (storage of home repair materials) which was established by C.C. Case No. 28170.

40.66/42.92 x 195/195 11th.

The items checked below are applicable: All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 State of Maryland Code for the Handicapped and Aged; and other appli-

B a building/ & other permit shall be required before beginning construction. C. Residential: Three sets of construction drawings are required to file a permit application. architect/Engineer seal is/is not required. Non-reproduced seals and signatures are required on Plans and Technical Data.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 for Commercial uses or 3'0 for One & Two Family use group of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, line 2. Section 1407 and Table 1402, also Section 503.2.

P. Requested variance appears to conflict with the Baltimore County Building Code,

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal. - Change use from R-3 to mixed uses "R-3" and "B".

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401.

(I.) Comments - Storage areas over 50 square feet in a "B" use shall be sprinklered. See Section 1702.12. See also Section 103.2 and 1405.6.3 for compliance.

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts: RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER NW/S Simms Ct., 450' N from Centerline of Simms Ave. (9034-: OF BALTIMORE COUNTY 9032A Simms Ct.), 11th District JOHN C. DIEGERT, JR., et ux, BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550 Petitioners BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204 ::::::: ENTRY OF APPEARANCE STEPHEN E. COLLINS DIRECTOR HARRY J. PISTEL, P. E. March 28, 1985 February 28, 1985 DIRECTOR Please enter the appearance of the People's Counsel in the above-entitled matter. Notices should e sent of any hearing dates Mr. Arnold Jablon Mr. Arnold Jablon Zoning Commissioner or other proceedings in this matter and of the passage of any preliminary Zoning Commissioner County Office Building County Office Building Towson, Maryland 21204 or final Order. Towson, Maryland 21204 Item No. 197,200,201,202,203,204,205) and 206. ZAC-Meeting of January 29, 1985 Re: Item #205 (1984-1985) Thyllie Cole Freedman Property Owner: Property Owner: John C. Diegert, et ux Location: N/WS Simms Ct. 450° N. from centerline Phyllis Cole Friedman Simms Ave. Existing Zoning: Acres: 40.66/42.92 x 195/195 Proposed Zoning: People's Counsel for Baltimore County District: 11th Dear Mr. Jablon: Max Commen The following comments are furnished in regard to the rlat submitted to this office for review by the Zoning Advisory Committee in connection with the subject Peter Max Zimmerman Acres: Deputy People's Counsel District: Rm. 223, Court House Towson, MD 21204 General Comments: 494-2188 Dear Mr. Jablon: Since no public facilities are affected, this office has no comment. The Department of Traffic Engineering has no comments for item numbers 197,200,201,202,203,204,205, and 206. I HEREBY CERTIFY that on this 6th day of March, 1985, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. John C. Bureau of Public Services Diegert, Jr., 9034 Simms Ct., Baltimore, MD 21234, Petitioners. JAM:EAM:PMO:ss MSF/ccm Peter Max Zimmerman CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY February 28, 1985 Posted for: Special Heaving, To approve relocation of an austra now forming use. BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353 Petitioner: John C. Diegart tr. et ux Mr. & Mrs. John C. Diegert, Jr. 9034 Simms Court Location of property: NW/S Simms Ct, 450' N e= Simms Ave. Baltimore, Maryland 21234 ARNOLD JADLON ZONING COMMISSIONER PETITION FOR SPECIAL HEARING
11th Election District NOTICE OF HEARING CERTIFICATE OF PUBLICATION Location of Signe Approx 3' Fr. drivewer of the 54/5 of property & Approx. RE: Petition for Special Hearing NW/S Simms Court, 450' N from the c/l of Simms Avenue (9034-9032A Simms Court) LOCATION: Northwest side Simms Court, 450 ft. North from centerline of Simms Avenue (2034-2024 Simms Court)
DATE AND TIME: Monday, March 25, 1988 at 11:00 A.M. PUBLIC HEAPING: Room 108, County Office Building, 11 West Cheapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Aot and Regulations of Baltimore County, will hold a public hearing: Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner should approve the relocation of an existing non-comforming are (storage of home repair materials) which was established by Circuit Court Case No. 38170 from 2084 Simms Court to 20324 Simms Court Being the property of John March 21, 1985 8 Fx roodway of Simons Clove property of Politionin John C. Diegert, Jr., et ux - Putitioners Case No. 85-262-SPH TOWSON, MD., March 7 Mr. and Mrs. John C. Diegert, Jr. 9034 Simms Court Baltimore, Maryland 21234 THIS IS TO CERTIFY, that the annexed advertisement was Number of Signs: published in THE JEFFERSONIAN, a weekly newspaper printed TIME: 11:00 a.m RE: Petition for Special Hearing
NW/S Simms Ct., 450' N from the c/l of
Simms Ave. (9034-9032A Simms Court)
John C. Diegert, Jr., et ux - Petitioners
Case No. 85-262-SPH and published in Towson, Baltimore County, Md., appearing on DATE: Monday, March 25, 1985 PLACE: Room 106, County Office Building, 111 West Chesapeake 85-262-5DH Dear Mr. and Mrs. Deigert Avenue, Towson, Maryland THE JEFFERSONIAN 85-262-5PH Petition for Special Hearing This is to advise you that \$54.47 is due for advertising and posting 18 Venetorli **Uge Times** of the above property. 11th Election District
LOCATION: Northwest side of
Simms Court, 450 ft. North from the
centerline of Simms Avenue (90349032A Simms Court).
DATE & TIME: Monday, March 25, This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing. permit may be insued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of anid permit during this period for good cause shows. Such request must be received in writing by the date the hearing set above or side at the hearing.

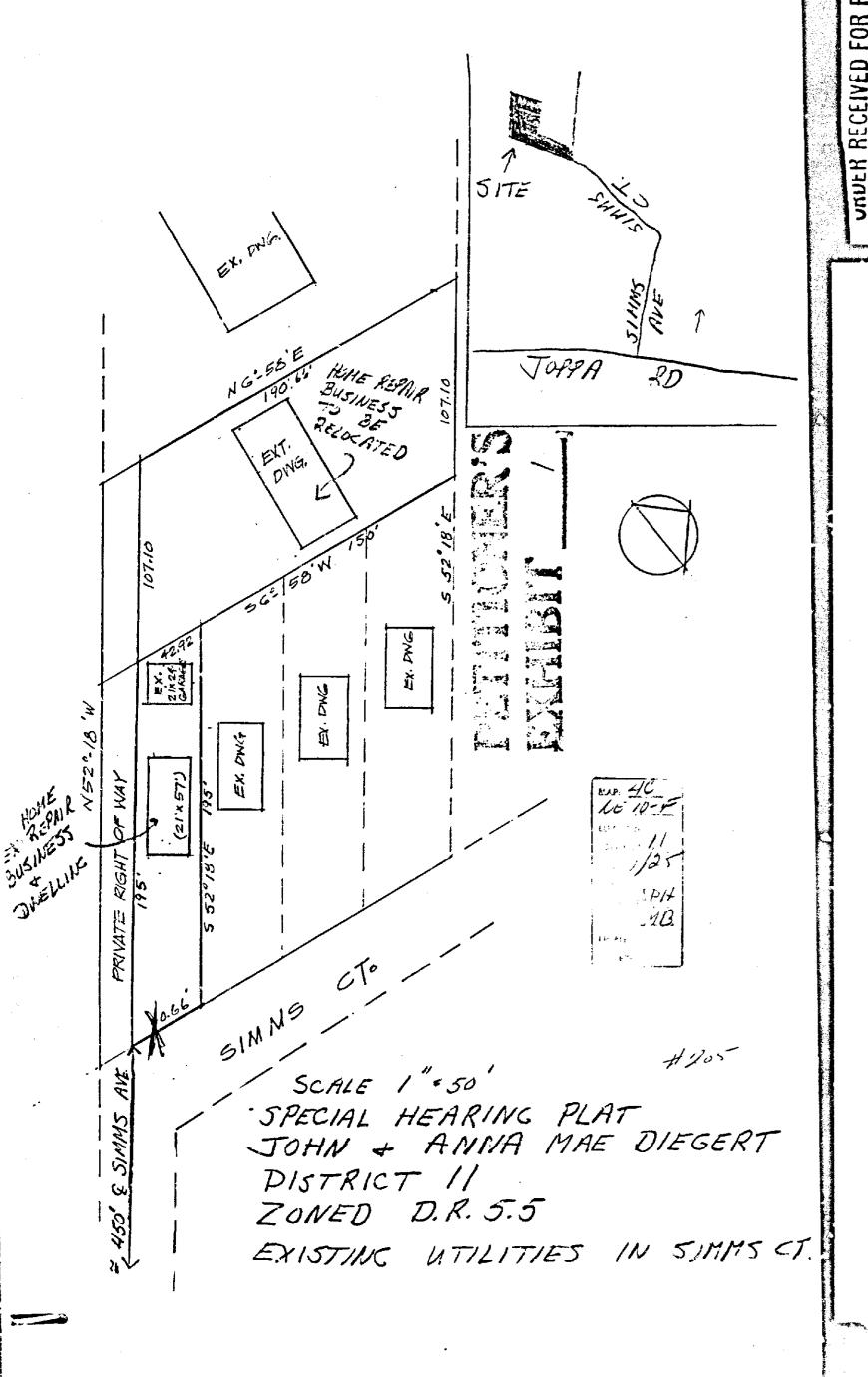
By Order Of ARNOLD JABLON, Zoning Commissioner of Baltimore County

Mar, 7. 1965 at 11:00 A.M.
PUBLIC HEARING: Room 106,
County Office Building, 111 West
Chesapeake Avenue, Towson, Please make the check payable to Baltimore County, Maryland, and This is to Certify, That the annexed remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing. Maryland.
The Zoning Commissioner of Beltimore County, by authority of the Zoning Act and Regulations of Beltimore County, will hold a public hearing.
Petition for Special Hearing under Section 500.7 of the Beltimore County Cost of Advertising Reg L 70380 of Baltimore County was inserted in the Times, a newspaper printed BALTIMORE COUNTY, MARYLAND Zening Regulations, to determine whether or not the Zoning Commis-\$ 24.00 and published in Baltimore County, once in each OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT BALTIMORE COUNTY, MARYLAND sioner should approve the relocation of an existing nonconforming use (storage of home repair materials) which was established by Circuit Court Case No. 38179 from 9034 Simms Court to 9032A Simms Court to 9032A Simms Court.

Being the preperty of John C. Diegert, Jr., et ux, a shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be is-OLDJABLON No. 003191 DATE 2-35.15 ing Commissioner OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT R-01-615-000 granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permits any section of the period for good cause. RECEIVED CALL DICE AS A TO AMOUNT \$ 100,00 FROM: Anna mit during this period for good cause shows. Such request start be received B032464445447ta 2232F VALIDATION OR SIGNATURE OF CASHIER

Beginning on the northwest side of Simms Court 450 feet north of the center Simms Ave. and thence running N 52° 18' 302.10', N 6° 58' E 190.66', S 52° 18' E 107.10', S 6° 58' W 150', S 52° 18' E 195' and thence southerly along Simms Court 40.66' to the place of beginning. Also known as 9034 & 9032A Simms Ct.



BEFORE THE IN RE: PETITION SFECIAL HEARING NW/S of Simms Court, 450' N ZONING COMMISSIONER of the centerline of Simms Avenue (9034 and 9032A Simms OF BALTIMORE COUNTY Court) - 11th Election District Case No. 85-262-SPH John C. Diegert, Jr., et ux, FINDINGS OF FACT AND CONCLUSIONS OF LAW The Petitioners herein request permission to transfer a legal nonconforming use from the basement of their present home, 9034 Simms Court, to another home, 9032A Simms Court, presently under construction, see Petitioners' Exhibit 1. The Petitioners appeared and testified. Protestants appeared and testified and were represented by Counsel. The issue presented is a narrow one of consideration. Can the Petitioners transfer their nonconforming use from one location to another? As a result of numerous complaints filed against the Petitioners' use of 9034 Simms Court, zoned D.R.3.5, charges of zoning violations were levied against them. After extensive quasi-judicial proceedings and an appeal to the Circuit Court for Baltimore County, it was determined by Judge John E. Raine in Case No. 88170 that the Petitioners enjoyed a nonconforming use limited to the $\sqrt{\text{storage of home repair building materials in the basement of their home.}}$ It is

tion 🗖 an adjoining lot. nonconconforming use is an exception to generally applicable zoning requirinents for a previously lawful, existing use. See, generally, 1 Anderson, merion Law of Zoning, 2nd Edition, Section 6.01 to 6.73; 3 Rathkopf, The Law Zorang and Planning, Section 58-1 to 62-18. The government recognizes a nonconfirming use in derogation of the general zoning scheme in order to protect

this use that the Petitioners wish to move to a home presently under construc-

PETITION FOR SPECIAL HEARING

11th Election District

LOCATION: Northwest side Simms Court, 450 ft. North from centerline of Simms Avenue (9034-9032A Simms Court)

DATE AND TIME: Monday, March 25, 1985 at 11:00 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the relocation of an existing nonconforming use (storage of home repair materials) which was established by Circuit Court Case

No. 88170 from 9034 Simms Court to 9032A Simms Court

Being the property of <u>John C. Diegert, Jr., et ux</u> the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

> BY ORDER OF ARNOLD JABLON ZONING COMMISSIONER OF BALTIMORE COUNTY

the interests of property owners. 1 Anderson, supra, Section 6.02 to 6.07; 3 Rathkopf, supra, Sections 58-1 to 58-3, 61-1. Nevertheless, the ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due respect to the legitimate interests of all concerned. A permissible aim of the zoning regulations is to limit and forbid expansion of a nonconforming use and to forfeit the right to it upon abandonment of the use or the destruction of the improvements housing the use. Grant v. Mayor and City Council of Balto., 129 A.2d 363 (1957). Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable ordinances and regulations. Feldstein v. LaNale Zoning Board, 227 A.2d 731 (1967). These regulations and ordinances must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Balto. v. Byrd, 62

In deciding whether a current activity is within the scope of a nonconforming use, the following factors should be considered:

- 1. to what extent the current use of the property reflects the nature and purpose of the original nonconforming
- is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;
- does the current use have a substantially different effect upon the neighborhood; and
- is the current use a drastic enlargement or extension of the original nonconforming use,

McKem v. Balto. County, 39 Md. App. 257 (1948).

A.2d 588 (1948).

general, a nonconforming use may not be extended to encompass new land Experty which was not in use at the time of the enactment of the new or amental zoning ordinance. Chizum v. Elkhart County Planning Commission, 263 NE.2 654 (Ind., 1970). Whether or not a nonconforming use can be enlarged or

extended is ordinarily governed by local ordinance, and Section 104.1 of the Baltimore County Zoning Regulations (BCZR) permits no expansion of a nonconforming building, structure, or use of a building, structure, or parcel of land more than 25% of the ground floor area of a building so used. Indeed, the law applicable to nonconforming uses relates that the basic premise underlining zoning regulations is to restrict rather than to expand. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417 (1977).

Although the lot on which the Petitioners are proposing the transfer was at one time a part of the same tract as the Petitioners current home, it was not a part of the Petitioners' property at the time Judge Raine made his decision and, certainly, that decision reflects the narrow scope within which a nonconforming another distinct location. To do so would be entirely inconsistent with the concept of a nonconforming use.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this ______ day of March, 1985, that the transfer of a legal nonconforming use from the basement of 9034 Simms Court to 9032A Simms Court is not permitted and, as such, the Petition for Special Hearing is hereby DENIED.

hn G. Disney, Esquire Robert J. Ryan, Esquire 俸. Ormsby Moore €ople's Counsel